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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/675,321	09/30/2003	Donald E. Weder	8404.004	5283

30589 7590 07/28/2004

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EXAMINER
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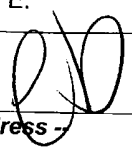
BOSS, WENDY L

ART UNIT	PAPER NUMBER
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1775

DATE MAILED: 07/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/675,321	<b>Applicant(s)</b> WEDER, DONALD E.	
	<b>Examiner</b> Wendy Boss	<b>Art Unit</b> 1775	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 30 September 2003.  
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-45 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1-45 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.  
5) ☐ Notice of Informal Patent Application (PTO-152)  
6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Claim Objections***

1. Claim 3 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claim 3 fails to further limit the parent claim, since claim 1 already establishes that the article is a flower pot cover.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-45 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

4. In claim 1, it is not clear whether it is the flower pot or the flower pot cover that comprises “a base having a closed lower end, an open upper end with an object opening extending there through and a decorative border....”. If it is the flower pot cover, applicant should insert the word “cover” between “pot” and “comprising” in line 3 of the claim.

5. Claims 24-44 refer to “the process of claim 1”; however, claim 1 is drawn to an article and not a process.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-45 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,546,699 (Weder et al.) in view of U.S. Patent No. 4,856,857 (Takeuchi et al.).

Weder discloses a flower pot cover made by forming at least one sheet of material into a substantially flexible, shape-sustaining flower pot cover (see column 2, lines 51-56). The shape-sustaining flower pot cover in the reference comprises a base having a closed lower end, an open upper end with an object opening extending there through and a decorative border extending outwardly from the open upper end of the base, the base of the flower pot cover having a plurality of overlapping folds of which at least a portion are permanently connect so that the flower pot cover may be substantially flattened and then unflattened to assume the original shape of the flower pot cover (see column 3, lines 7-21; and Figures 3A and 3B). The reference further discloses that the sheet of material may have a thickness from less than 1.0 mils to 3.0 mils (see column 22, lines 5-7), which is within applicant's claimed range. Weder also discloses that a substantial portion of the overlapping folds extend over different distances and at various and arbitrary angles (see column 4, lines 15-21). The reference further discloses that the decorative border is substantially free of permanently connected overlapping folds (see column 22, lines 8-28). It is also disclosed in the reference that the sheet of material may be a polymer film (see column 23, lines 1-2).

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Weder does not necessarily disclose that the sheet of material is provided with a holographic design; however, it is disclosed that the sheet material may be polypropylene (see column 2, lines 34-38). Attention is directed to Takeuchi which teaches that it is well known to provide holographic designs on polypropylene films for use as packaging materials (see column 19, lines 11-33; and column 20, lines 21-51). Such a teaching would have motivated one having ordinary skill in the art to use the Takeuchi polypropylene material as the polypropylene sheet material of Weder.

### ***Double Patenting***

8. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

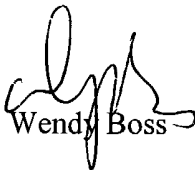
9. Claims 1-45 are provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1, 2 and 4-45 of copending Application No. 09/967,149. This is a provisional double patenting rejection since the conflicting claims have not in fact been patented.

***Conclusion***

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Wendy Boss whose telephone number is 571-272-1534. The examiner works a part-time schedule and can normally be reached on M-Th 5:30a-9:30a.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Deborah Jones can be reached on 571-272-1535. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Wendy Boss